

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

RAW RESOURCES, LLC and	§	CIVIL ACTION NO. 6:23-cv-00284
RAW ELECTRIC, LLC,	§	
	§	
Plaintiffs,	§	JURY TRIAL DEMANDED
	§	
v.	§	
	§	
EM RESOURCES LLC f/k/a BORAL	§	
RESOURCES LLC,	§	
	§	
Defendant.	§	

**PLAINTIFFS’ ORIGINAL COMPLAINT**

Plaintiff RAW Resources, LLC (“RAW Resources”), in its capacity as Contractor under a Fixed-Price Construction Contract (dated February 21, 2022) by and between RAW Resources and Defendant EM Resources LLC f/k/a Boral Resources LLC<sup>1</sup> (“EM Resources”), and Plaintiff RAW Electric, LLC (“RAW Electric”), in its capacity as Contractor under a Fixed-Price Construction Contract (dated February 24, 2022) by and between RAW Electric and EM Resources, file this action to recover damages arising from EM Resources’ breach of the contracts.<sup>2</sup> Per the construction contracts, EM Resources engaged RAW Resources and RAW Electric (collectively, “RAW” or “Plaintiffs”) to perform Work at the Oak Grove Bottom Ash Grinding Project at the Oak Grove Station, located in Franklin, Texas. RAW fully performed their obligations, and submitted applications for payment monthly to EM Resources for the Work completed. Although EM Resources never disputed any application for payment, it refuses to pay

---

<sup>1</sup> According to an Amendment to Registration filed with the Texas Secretary of State on March 15, 2022, Boral Resources, LLC (TxSOS Filing Number 802510599) changed its name to EM Resources, LLC.

<sup>2</sup> Initially capitalized terms used in this Complaint and that are not otherwise defined herein have the same meaning as is ascribed to such terms in the Fixed-Price Construction Contract.

RAW Resources over \$1,600,000 and RAW Electric over \$900,000. EM Resources' failure to honor its contractual obligations under the construction contracts leaves RAW no choice but to bring the claims alleged below.

### **PARTIES**

1. RAW Resources is a Delaware limited liability company with its principal place of business at 974 Greasy Ridge Road, Princeton, West Virginia 24740, and neither it nor its members is a citizen of the State of Texas.

2. RAW Electric is a Delaware limited liability company with its principal place of business at 974 Greasy Ridge Road, Princeton, West Virginia 24740, and neither it nor its members is a citizen of the State of Texas.

3. EM Resources is a Delaware limited liability company with its principal place of business at 10701 South River Front Parkway, Suite 300, South Jordan, Utah 84095, and neither it nor its members is a citizen of the State of Texas. Registered with the Texas Comptroller of Public Accounts (Tax ID 32061164854), EM Resources' outlet name is "Boral Resources" with twelve locations in Texas, including one at 8127 Oak Grove Road, Franklin, Texas 77856. EM Resources may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter under 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over EM Resources because it purposefully directed its activities at Texas, including Texas residents who purchase coal fly ash and bottom

ash from EM Resources for use in a broad range of applications including concrete pavements, asphalt, road base, building material applications, embankments, mineral fillers, soil stabilization, or fertilizers. EM Resources operates a bottom ash harvesting and grinding business, resides in, and transacts business in this district. EM Resources also has sufficient business or contacts within the State of Texas to justify jurisdiction under the United States Constitution and the Texas long-arm statute because, among other things, it has twelve outlet locations in Texas, including one in Robertson County.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

### **FACTUAL BACKGROUND**

#### **A. EM Resources' business and activities**

7. In February 2022, Eco Material Technologies, Inc. announced that it acquired Boral Limited's North American fly ash business. Fly ash and bottom ash are naturally-occurring products from the coal combustion process.

8. EM Resources, a division of Eco Material Technologies, markets and distributes coal combustion products ("CCPs") in Texas and throughout the United States.

9. From the Oak Grove site in Franklin, Texas, EM Resources harvests previously disposed CCPs and processes the ash for use in building materials, among other things.

#### ***The February 21, 2022 Fixed-Priced Construction Contract***

10. On February 21, 2022, RAW Resources and EM Resources executed the Fixed-Price Construction Contract under which EM Resources agreed to pay RAW Resources \$5,307,212.40 for the full performance of the Work of this Contract. A true and correct copy of the February 21, 2022 Fixed-Price Construction Contract is attached hereto as Exhibit A.

***The February 24, 2022 Fixed-Priced Construction Contract***

11. On February 24, 2022, RAW Electric and EM Resources executed the Fixed-Price Construction Contract under which EM Resources agreed to pay RAW Electric \$6,541,079.48 for the full performance of the Work of this Contract. A true and correct copy of the February 24, 2022 Fixed-Price Construction Contract is attached hereto as Exhibit B.

12. The construction contracts provide, in relevant part, as follows:

Contractor shall submit applications for payment monthly following the Notice to Proceed, which applications for payment shall reflect estimated progress as of the end of that month for that portion of the Work actually completed. Applications for payment shall be in writing and Contractor shall provide support reasonably satisfactory to Owner in respect of each such application. With each application for payment, Contractor shall also deliver a waiver and release in a form complying with the law of the State of Texas as attached at Exhibit 3 to this Contract.

Contract, § 5.3.

**B. EM Resources' default of its payment obligations**

13. After completing required Work, RAW Resources and RAW Electric submitted applications for payment to EM Resources, in accordance with the construction contracts.

14. The construction contracts provide, in relevant part, as follows:

Within seven (7) calendar days of receiving Contractor's application for payment, Owner shall notify Contractor in writing if it disputes any progress estimates or amounts claimed in the application for payment. Owner's failure to so notify Contractor shall constitute Owner's approval of the application for payment. Owner shall pay amounts not subject to dispute and otherwise properly payable to Contractor in accordance with the Contract Documents within thirty (30) calendar days following Owner's receipt of a payment application and waiver and release form. *Provided, however,* Owner may retain ten percent (10%) of each such application for payment (the "Retainage") until the progress of the Work reaches fifty percent (50%) completion. Thereafter, Owner shall not retain any additional amount from progress payments to Contractor. Contractor's application for payment shall reflect the total payment due less Retainage. Owner shall pay the Retainage held once Contractor achieves Substantial Completion of the Work.

Contract, § 5.3.

15. EM Resources never timely disputed any application for payment submitted by RAW Resources or RAW Electric.

16. EM Resources is liable to RAW Resources, without offset or defense, for the indefeasible payment in full of the outstanding applications for payment plus all costs, fees, expenses, interest and other charges, including but not limited to, attorneys' fees, under the February 21, 2022 Fixed-Price Construction Contract.

17. EM Resources is liable to RAW Electric, without offset or defense, for the indefeasible payment in full of the outstanding applications for payment plus all costs, fees, expenses, interest and other charges, including but not limited to, attorneys' fees, under the February 24, 2022 Fixed-Price Construction Contract.

18. EM Resources is in default under the terms and conditions of the construction contracts; the defaults are continuing; and the defaults have not been cured.

19. Despite demand, EM Resources has failed and refused, and continues to refuse, to pay (i) RAW Resources the amount of indebtedness due and owing under the February 21, 2022 Fixed-Price Construction Contract and (ii) RAW Electric the amount of indebtedness due and owing under the February 24, 2022 Fixed-Price Construction Contract.

20. All necessary notices under the construction contracts or applicable law have been given by RAW Resources and/or RAW Electric to EM Resources, and any applicable cure periods under the construction contracts with respect thereto have expired.

## **COUNT I**

### **BREACH OF CONTRACT**

21. Plaintiffs hereby incorporate by reference each of their allegations contained in paragraphs 1-20 of this Complaint as if set forth herein.

22. The February 21, 2022 Fixed-Price Construction Contract constitutes a valid and enforceable contract between RAW Resources and EM Resources.

23. RAW Resources has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the February 21, 2022 Fixed-Price Construction Contract.

24. EM Resources breached the February 21, 2022 Fixed-Price Construction Contract by failing to pay RAW Resources the amounts owed for Work completed, as reflected in the applications for payment RAW Resources prepared and provided to EM Resources during the course of performance of the contract.

25. As a result of EM Resources' breach of contract, RAW Resources has been damaged in the amount of \$1,606,949.83, the total amount of unpaid applications for payment owed by EM Resources to RAW Resources.

## **COUNT II**

### **BREACH OF CONTRACT**

26. Plaintiffs hereby incorporate by reference each of their allegations contained in paragraphs 1-20 of this Complaint as if set forth herein.

27. The February 24, 2022 Fixed-Price Construction Contract constitutes a valid and enforceable contract between RAW Electric and EM Resources.

28. RAW Electric has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the February 24, 2022 Fixed-Price Construction Contract.

29. EM Resources breached the February 24, 2022 Fixed-Price Construction Contract by failing to pay RAW Electric the amounts owed for Work completed, as reflected in the

applications for payment RAW Electric prepared and provided to EM Resources during the course of performance of the contract.

30. As a result of EM Resources' breach of contract, RAW Electric has been damaged in the amount of \$904,822.08, the total amount of unpaid applications for payment owed by EM Resources to RAW Electric.

### **COUNT III**

#### **QUANTUM MERUIT**

31. Plaintiffs hereby incorporate by reference each of their allegations contained in paragraphs 1-20 of this Complaint as if set forth herein.

32. Pleading in the alternative, to the extent (i) the February 21, 2022 Fixed-Price Construction Contract is not a valid and enforceable contract, (ii) the existing contract does not cover the subject matter of the dispute between the parties, (iii) RAW Resources performed services or provided materials that were outside of or over and above those contemplated by the existing contract, or (iv) the existing contract is void, invalid, or unenforceable, the services and materials RAW Resources provided to EM Resources were rendered under an understanding and expectation of both parties that compensation therefor was to be made.

33. RAW Resources acted pursuant to an explicit or implicit request for services and materials by EM Resources.

34. EM Resources was aware and knew that RAW Resources was not providing the services and materials gratuitously.

35. The services and materials provided by RAW Resources conferred a benefit on EM Resources. The amount of that benefit is quantified in the unpaid applications for payment.

36. As a result of EM Resources' refusal to pay RAW Resources for the reasonable value of the services and materials provided, RAW Resources has been damaged in the amount of \$1,606,949.83, plus interest, costs, and expenses.

#### **COUNT IV**

#### **QUANTUM MERUIT**

37. Plaintiffs hereby incorporate by reference each of their allegations contained in paragraphs 1-20 of this Complaint as if set forth herein.

38. Pleading in the alternative, to the extent (i) the February 24, 2022 Fixed-Price Construction Contract is not a valid and enforceable contract, (ii) the existing contract does not cover the subject matter of the dispute between the parties, (iii) RAW Electric performed services or provided materials that were outside of or over and above those contemplated by the existing contract, or (iv) the existing contract is void, invalid, or unenforceable, the services and materials RAW Electric provided to EM Resources were rendered under an understanding and expectation of both parties that compensation therefor was to be made.

39. RAW Electric acted pursuant to an explicit or implicit request for services and materials by EM Resources.

40. EM Resources was aware and knew that RAW Electric was not providing the services and materials gratuitously.

41. The services and materials provided by RAW Electric conferred a benefit on EM Resources. The amount of that benefit is quantified in the unpaid applications for payment.

42. As a result of EM Resources' refusal to pay RAW Electric for the reasonable value of the services and materials provided, RAW Electric has been damaged in the amount of \$904,822.08, plus interest, costs, and expenses.

### **PRAYER FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully request that the Court summons EM Resources to appear and answer, and that, on final trial, the Court enter a judgment against EM Resources for all relief sought herein as follows:

- a. That Plaintiffs be awarded compensatory damages in an amount to be proven at trial;
- b. That EM Resources pay Plaintiffs' reasonable attorneys' fee according to proof;
- c. That EM Resources pay the costs of court and expenses incurred by Plaintiffs in this action;
- d. That EM Resources pay Plaintiffs pre-judgment and post-judgment interest on the damages awarded, continuing until such judgment is paid, at the maximum rate allowed by law; and
- e. Such other and further relief, whether general or special, at law or in equity, to which Plaintiffs may be justly entitled.

### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs respectfully demand a jury trial of all issues triable to a jury in this action.

Dated: April 17, 2023

Respectfully submitted,

/s/ Samuel E. Joyner

Samuel E. Joyner (Texas 24036865)

**FROST BROWN TODD LLP**

2101 Cedar Springs Road, Suite 900

Dallas, Texas 75201

Telephone: (214) 545-3472

Facsimile: (214) 545-3473

sjoyner@fbtlaw.com

*Attorneys for Plaintiffs*

*RAW Resources, LLC and*

*RAW Electric, LLC*